

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1308 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

R P SHAH

Versus

GOVT. OF GUJARAT

Appearance:

MR GA PANDIT for Petitioner

MR UR BHATT, AGP for the respondents

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 26/11/1999

ORAL JUDGEMENT

In this petition under Article 226 and 227 of the Constitution of India, the petitioner has challenged the order passed by the Special Secretary (Appeals) Revenue Department under section 211 of the Bombay Land Revenue Code in a revision dated 8th January 1985, inter alia, contending that the first authority before whom the matter was conducted passed the adverse order on 7.3.84 without giving an opportunity of hearing. In short, the

sole contention raised before this Court is that the impugned order of the DDO, Ahmedabad, recorded on 7.3.84, copy whereof is produced at Annexure C, exercising powers under section 66 of the Code, directed the petitioner to remove the construction within 30 days and cancelling the non-agricultural permission and thereby converting the land bearing City Survey No.112/1 situated at village Makarba and to hand over the possession in respect of 4380 sq. mtrs of land. The order of the DDO came to be confirmed in a revision under section 211 of the Code in Revision No.501/84 by the Secretary, Revenue Department (Appeals), State Government, Ahmedabad on 8th January, 1985.

It is, successfully, noticed from the record that the first impugned order passed by the DDO which, ultimately, came to be confirmed in revision is, unquestionably, without giving sufficient opportunity of hearing to the present petitioner. Thus, the principles of "audi alterem partem" which is one of the important facets of hearing of judicial or quasi-judicial matter is not observed in the present case. With the result, prejudice has been caused to the petitioner. The order passed by the DDO without giving an opportunity of hearing to the petitioner, wrongly, came to be confirmed in revision. The revisional authority has not assigned any clear and cogent reason as to why the matter was not remanded despite the fact that there was no hearing. It is in these circumstances and for the larger interest of justice, the impugned orders are required to be quashed and set aside with a direction to the concerned authority to decide and determine the claim of the petitioner afresh by passing a speaking order.

In the result, the impugned orders of the Special Secretary, Revenue Department (Appeals) confirming the order of the DDO which is vitiated and violative of principles of natural justice are quashed and set aside. The concerned DDO, respondent No.3, will consider and decide the matter after giving an opportunity of hearing to the petitioner in accordance with law. Rule is made absolute to the aforesaid extent without any order as to costs. Since the matter is very old, respondent no.3 authority is directed to accord priority in hearing the matter of the petitioner as expeditiously as possible but not later than four months from the date of receipt of writ from this Court.

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(vjn)

